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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Hogle) Art Unit: 2854
Serial No.: 09/883,867)
Filed: June 18, 2001) Examiner: Nguyen
For: KEYBOARD SUPPORT PLATFORM) 1161-1.CIP
) June 22, 2004
) 750 B STREET, Suite 3120
) San Diego, CA 92101
)

NOTICE OF APPEAL

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

The rejections in the Office Action dated December 24, 2003 are hereby appealed, and a three month extension of time requested and duly paid for.

Respectfully submitted,


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06/25/2004 CNGUYEN 00000099 09883867

02 FC:2401

165.00 OP

1161-CI.NAP



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APPEAL BRIEF

JUN 29 2004

TECH CENTER 2800

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

This appeal brief is submitted under 35 U.S.C. §134. This appeal is further to Appellant's Notice of Appeal filed herewith.

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1161-CI.APP

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(1) Real Party in Interest

The real party in interest is the assignee, Active Input Solutions, LLC.

(2) Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3) Status of Claims

Claims 14-24 are pending and finally rejected.

(4) Status of Amendments

No amendments are outstanding.

(5) Summary of Invention

The invention of independent Claim 14 is a support platform having a lower plate and an upper plate movably attached to the lower plate, at least one of which plates is rigid. A bladder is disposed between the upper plate and the lower plate. The bladder is inflatable and deflatable in order to move the upper plate with respect to the lower plate.

(6) Issues

(a) Whether Claims 14, 15, and 19-24 are unpatentable under 35 U.S.C. §103 as being obvious over Weber et al. USPN 5,616,897 in view of McConnell USPN 5,037,054.

(b) Whether Claim 16 is unpatentable under 35 U.S.C. §103 as being obvious over Weber et al. USPN 5,616,897 in view of McConnell USPN 5,037,054 and further in view of the allegation of inherency.

(c) Whether Claims 17 and 18 are unpatentable under 35 U.S.C. §103 as being obvious over Weber et al. USPN 5,616,897 in view of McConnell USPN 5,037,054 and further in view of Brown USPN 5,806,115.

(7) Grouping of Claims

The claims are grouped as indicated in issues (a)-(c) above owing to the different grounds of rejection, see MPEP §1208.

(8a) Argument

The primary issue is simple so Appellant will keep it short. The rejections have been arrived at only by proposing to alter the flexible roll-up device of Weber et al. to have a rigid plate as taught by McConnell. But Weber et al. must be flexible so that it can perform its principal purpose, namely, rolling it up as intended (see, e.g., the Abstract and elsewhere in Weber et al. including col. 3, line 6 continuing to col. 4, line 5). Accordingly, modifying Weber et al. to have a rigid plate would defeat the principal purpose and mode of operation of Weber et al. and, hence, would be improper, MPEP §2143.01 (citing In re Gordon and In re Ratti).

This simple, straightforward point has been brushed aside with an intransigent retort. Specifically, the Examiner explains that because the *keys* of Weber et al. can be rigid, this means that a rigid *support plate ipso facto* would be required. Unfortunately for the *prima facie* case, this requirement has escaped Weber, who understands that rigid keys can be held in flexible rollable support sheets, and a good thing too, or else Weber's representation that he provides a rollable keyboard would be a prevarication. Appellant is not as

eager as the Examiner to impute such a lack of integrity to Mr. Weber. In short, the Examiner's response to the observation that Weber et al. cannot be modified to have a rigid plate and still work as intended is to observe that Weber et al. *must indeed* have a rigid plate, darn it, without ever addressing why Weber et al.'s roll-up feature would or could be retained. Plainly, the rejection begs reversal.

Additionally, apart from the fact that modifying Weber et al. to have a rigid support would wreck Weber et al., nothing in the references motivates the skilled artisan to combine McConnell with Weber et al., for the further fact that Weber et al. means to fold up its keyboard when not in use and McConnell seeks to provide a way to move a keyboard out of the way when not in use. Why would one be motivated to place the foldable keyboard of Weber et al. on the arm of McConnell to move it out of the way when not in use, since that problem is already addressed by the foldability of Weber et al.? Furthermore, because Weber et al. actually envisions portability (see, e.g., Weber et al., col. 2, lines 61-63; col. 2, lines 66 and 67; col. 3, lines 3-5; col. 6, lines 40-44), one would be motivated away from placing it on a fixture such as McConnell's (see MPEP §2142 *et seq.*, advising that all teachings must be considered in making a *prima facie* case of obviousness including those that teach away from an invention). Accordingly, for these additional reasons the claims are patentable.

(8b) Argument

Claim 16, which requires a bleed orifice in fluid communication with the bladder, has been rejected using the references discussed above, neither of which has a bleed orifice, on the allegation that such an orifice "is necessary" in Weber et al. "to provide an operative device". This rejection evidently is one of inherency. To be inherent, a device must *necessarily* function as alleged, MPEP §2112. Weber et al. as

admitted by the Examiner does not teach the claimed orifice, and moreover it does not necessarily require an orifice, because (1) Weber et al. can still function as a keyboard without deflating it after initial inflation; and (2) if it is desired to deflate Weber et al. post-inflation there are ways other than bleed orifices to do so, e.g., by disconnecting a tube from the inlet 44 (Figure 5a). On the other hand, if the Examiner's allegation that Weber et al. must have a bleed orifice to be operative, yet admittedly does not show such an orifice, then that means that the Examiner improperly is using an inoperative reference as prior art. In either case, the rejection of Claim 16 is legally deficient.

(8c) Argument

With respect to the rejection of Claims 17 and 18 based on a combination of Weber et al., McConnell, and Brown, there is no fair prior art suggestion to combine Brown with the keyboard references of Weber et al. and McConnell as proposed because Brown is directed to establishing a static position of a bed mattress, and to boosting a person up and off of a chair. Establishing a static position of a bed and boosting people off chairs is not pertinent to the keyboard field of Weber et al. and McConnell. That raises the question, where is there a *prior art* suggestion to combine the controller of Brown with the device of Weber et al.? The proffered suggestion - that the controller taught by Brown improves typing efficiency - plainly does not come from Brown, since it nowhere mentions a keyboard or anything like it, and it plainly does not come from Weber et al., since the examiner admits that a controller is missing altogether from Weber et al. That leaves, as the sole remaining source for the proffered suggestion, the knowledge of one of ordinary skill in the art, MPEP §2143.

The suggestion to combine references may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or in some cases from the nature of the problem, but "more often [the suggestion] comes from the teachings of the pertinent references". The range of sources available does not diminish the requirement for *actual evidence*, and "broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence", In re Dembiczak, 175 F.3D 994, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999). As set forth in Dembiczak, "the best defense against the subtle but powerful attraction of hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references", Id. at 999, 50 U.S.P.Q.2d at 1617.

Here, absolutely no evidence has been adduced of record of any knowledge in the art that controllers in furniture-related devices can be used in keyboard-related devices. The proposed combination of Brown with Weber et al. consequently lacks the requisite prior art suggestion and accordingly is legally deficient under the MPEP.

Respectfully submitted,



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APPENDIX A - APPEALED CLAIMS

14. A support platform, comprising:
 - a lower plate;
 - an upper plate movably attached to the lower plate; and
 - a bladder disposed between the upper plate and the lower plate, the bladder being inflatable and deflatable in order to move the upper plate with respect to the lower plate, wherein
 - at least one of: the upper plate, and lower plate, is rigid.
15. The support platform of Claim 14, further comprising:
 - a pump in fluid communication with the bladder.
16. The support platform of Claim 15, further comprising:
 - a bleed orifice in fluid communication with the bladder.
17. The support platform of Claim 15, further comprising:
 - a controller electrically connected to the pump.
18. The support platform of Claim 17, wherein the controller periodically energizes and de-energizes the pump.

19. The support platform of Claim 14, wherein the support platform is attached to an articulated arm extending from a desk.
20. The support platform of Claim 19, wherein the support platform is laterally movable with respect to the desk.
21. The support platform of Claim 14, further comprising:
at least one of: a keyboard, and a mouse disposed on the support platform.
22. The support platform of Claim 14, wherein the bladder is movable within the support platform.
23. The support platform of Claim 14, wherein the upper plate is pivotably attached to the lower plate.
24. The support platform of Claim 14, wherein the platform defines a front edge and a rear edge relative to a user, and the bladder is disposed closer to the front edge than the rear edge.